

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Criminal Misc. Application No. 79/2003

1. Smt. Saroj W/o Virendra
 2. Naresh S/o Virendra
 3. Virendra
All R/o Preet Vihar Gang Nahar
Roorkee District Haridwar
- ...Petitioners.

Vs.

1. State of Uttaranchal
 2. Dharamveer Singh S/o Kishan Pal Singh
R/o 542 Preet Vihar Colony Roorkee
P.S. Gang Nahar District, Haridwar
- Respondents.

Sri Arvind Vashistha learned counsel for the petitioners.

Sri J.P.Joshi, learned counsel for respondent No.2

Learned A.G.A. for respondent No.1.

Date: 25-11-2003

Hon'ble Irshad Hussain, J.

The instant petition under section 482 of the Code of Criminal Procedure, 1973 (for short 'Code') has been filed for quashing the charge sheet dated 3.11.2002 submitted in case crime No. 203/2002 under sections 323, 504 and 506 I.P.C. and section 3 (1) (X) of the S.C. and S.T. Act and also the summoning order dated 4.12.2002 passed by Judicial Magistrate, Roorkee, District Haridwar in criminal case No. 2949/2002.

2- Brief facts giving rise to this petition are that respondent No.2 lodged an F.I.R. on 22.9.2002 at P.S. Gang Nahar, District Haridwar against the revisionists alleging that they assaulted his wife Smt. Rajkali and niece Rubi and gave threat to kill them at about 6 P.M. on that day. Both the victims received injuries. The complainant-respondent No.2 is a Harijan by caste and whereas the petitioners belong to higher caste and, therefore, the police registered the case under the above sections. On investigation charge sheet has accordingly been submitted against the petitioners and the same is impugned in this case.

3- Learned counsel for the petitioners submitted that the offences except offence under section 3 (1) (X) of the S.C. and S.T. Act are non-cognizable and that offence under this provision was not made out and the charge sheet had illegally been submitted under this count also. Section 3 (1)(X) of the S.C. and S.T. Act reads as below:-

“3. PUNISHMENTS FOR OFFENCES OF ATROCITIES.

(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe

.....
.....

(X) intentionally insults or intimidates with intent to humiliate a member of Scheduled Caste or a Scheduled Tribe in any place within public view;

.....

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.”

4- From perusal of the above provision it is evident that the offence will be made out if a member of a Scheduled Caste or Scheduled Tribe is intentionally intimidated with intent to humiliate him in public view. This do not appear to be the case here because the complainant disclosed his caste as Harijan when the Head Moharir made a query from him at the time of lodging of the F.I.R. (Annexure-1). Copy of the statements of complainant Dharamveer Singh and his wife Smt. Rajkali recorded under section 161 of the ‘Code’ (Annexure-4) reveal that in the instant case the alleged assailants have not used insulting and intimidating language with reference to the caste of the said alleged victims. Therefore, neither the allegations made in the first information report nor the statements recorded during investigation prima facie constitute an offence punishable under section 3 (1)(X) of the S.C. and S.T.Act, there was no occasion to file charge sheet under this offence by the Investigating Officer. Further, at the time of the taking cognizance the learned Magistrate was suppose to have perused the allegations of the F.I.R. and the case diary but the same appears to have not been done and, therefore, the order of taking cognizance dated 4.12.2002 in regard to the said offence can not be legally justified.

5- In regard to the allegation of the assault and criminal intimidation no doubt the offences are non-cognizable but it is of significance that after investigation charge sheet had been submitted under section 173 of the ‘Code’ against the petitioners. As submitted by the learned counsel for the respondent No.2 and from perusal of the record it is evident that there is also cross version of the occurrence and from the side of the petitioners on an application under section 156(3) of the ‘Code’ case crime No. 230/2002 under sections 147,452, 323 and 506 I.P.C. was registered against respondent No.2 and four other persons. The petitioners have also filed the copy of the application under section 156(3) of the ‘Code’ (Annexure-3) as well as the xerox copies of the

injury reports of the injured of their side which indicate that the parties do not dispute that the occurrence took place in which members of both the parties sustained injuries. In a situation like this and the offences having been disclosed under sections 323, 504 and 506 I.P.C., the charge sheet can not legally be quashed in its entirety and the same need to be partly quashed in regard to the offence under section 3 (1)(X) of the S.C. and S.T. Act.

6- Since the charge sheet had been filed against the petitioners and it is stated that the offences under sections 323, 504 and 506 I.P.C. are not cognizable it will be in the fitness of things to treat the same as a complaint as defined under section 2 (d) of the 'Code' and the same can be tried simultaneously by the same Magistrate with the charge sheet or the complaint as the case may be of the cross-version.

7- In view of above the petition partly succeed and the charge sheet dated 3.11.2002 is liable to be partly quashed and the order of taking cognizance dated 4.12.2002 is liable to be partly set aside. Accordingly, the charge sheet is quashed so far as it relate to the offence under section 3 (1)(X) of the S.C. and S.T. Act and the order of taking cognizance dated 4.12.2002 is set aside so far as it pertain to the offence under the said provision of the S.C. and S.T. Act. The trial against the petitioners shall proceed according to law for offences punishable under sections 323, 504 and 506 I.P.C. simultaneously with the cross-case, if any, registered on submission of the charge sheet or as a complaint. The stay order dated 12-5-2003 is vacated.

(Irshad Hussain, J.)

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